

# LEGISLATIVE GUIDE

## *Legal Services Division*



### Note to Reader:

Legislative Guides, prepared in an objective and nonpartisan manner, provide a general survey of a particular area of the law and are intended for use primarily by members of the Iowa General Assembly and their staffs. Legislative Guides are updated periodically to reflect changes in the law. The reader is cautioned against using information contained in a Legislative Guide to draw conclusions as to the legality of a particular behavior or set of circumstances.

### About the Author:

Joe Royce, J.D., the principal author of this Guide, retired from the Legislative Services Agency in January 2015. Mr. Royce served as Legal Counsel for the Administrative Rules Review Committee, a statutory committee of the General Assembly, beginning in 1976.

This Guide was revised and updated by Jack Ewing, J.D., Drake University Law School, 2010. Mr. Ewing has been a Legal Counsel for the Legal Services Division of the Legislative Services Agency since 2010. He staffs the Labor, Education, and Administrative Rules Review Committees, and drafts legislation in the areas of labor, education, and administrative law.

Mr. Ewing can be reached by phone at (515) 281-6048 or by e-mail at:  
jack.ewing@legis.iowa.gov

Iowa Legislative Services Agency  
State Capitol  
Des Moines, IA 50319

January 2015

## RULEMAKING GUIDE - Test

### Table of Contents

<b>I. Introduction and Overview of State Government Rulemaking .....</b>	<b>1</b>
<b>II. A Sketch of the Iowa Administrative Procedure Act (IAPA) .....</b>	<b>1</b>
A. Overview of Iowa Code Chapter 17A .....	1
B. Background of the Rulemaking Process .....	2
C. Delegation of Rulemaking Authority .....	2
1. Authority to Adopt a Rule: Express Language or Necessary Implication .....	2
2. Substantial Compliance .....	3
3. Narrow Construction of Rulemaking Authority .....	3
<b>III. Definition of Agency — Iowa Code Section 17A.2 .....</b>	<b>3</b>
A. Administrative Office or Unit .....	3
B. Agency Exclusions and Requirements .....	3
<b>Appendix A — State Agencies in the Iowa Administrative Code .....</b>	<b>4</b>
<b>Appendix B — The Iowa Rulemaking Process Diagram .....</b>	<b>5</b>



# RULEMAKING GUIDE

## I. Introduction and Overview of State Government Rulemaking

Unless otherwise indicated, references in this Legislative Guide to the Iowa Code incorporate the 2014 Iowa Code. References to the Iowa Administrative Code are current through October 2014.

Rulemaking filings generally contain more than a single rule change. The 322 filings actually represent over 1,200 individual rule additions, amendments, or repeals. Rulemaking activity for the last 10 years is as follows:

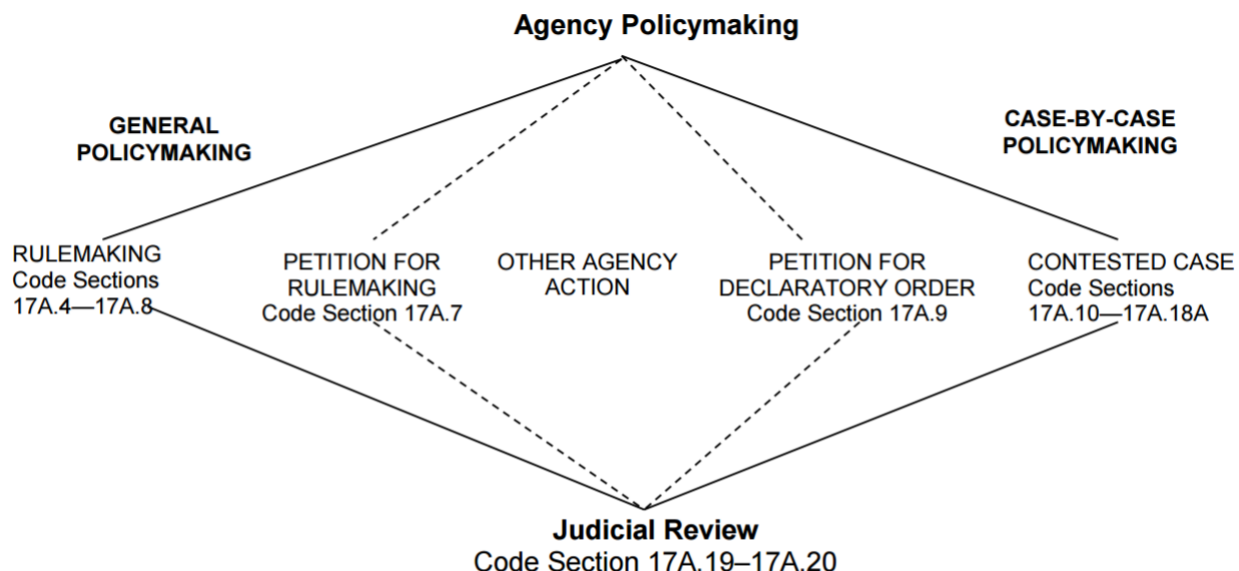
**Iowa Rulemaking Filings — Calendar Years 2004 — 2013**

YEAR	AGENCIES	FILINGS		YEAR	AGENCIES	FILINGS
2013	56	322		2008	52	468
2012	56	264		2007	51	446

## II. A Sketch of the Iowa Administrative Procedure Act (IAPA)

### A. Overview of Iowa Code Chapter 17A

Iowa Code chapter 17A, referred to as the Iowa Administrative Procedure Act (IAPA), has a variety of procedures and requirements that impact how a state agency creates policy, as summarized in the following diagram:





## B. Background of the Rulemaking Process

The current Iowa rulemaking process went into effect in 1975<sup>1</sup>, and is based on the 1946 federal Administrative Procedure Act<sup>2</sup> and the 1961 Model State Administrative Procedure Act.<sup>3</sup>

The rulemaking process serves four basic functions:

- It requires agencies to publish a notice detailing their intention to adopt a new rule or revise an existing one.
- It provides a publication process to widely distribute final rules.

The rulemaking process is to be construed broadly to effectuate its purposes. Iowa Code section 17A.23 specifically provides that any statute attempting to lessen or eliminate the requirements of the IAPA must refer specifically to the IAPA; otherwise the action will not be effective.<sup>4</sup> Iowa Code section 17A.1(2) states in part that:

“ . . . nothing in this chapter is meant to abrogate in whole or in part any statute prescribing procedural duties for an agency which are greater than or in addition to those provided here.”

## C. Delegation of Rulemaking Authority

The fundamental principle concerning the scope of agency rulemaking was established over 50 years ago—rules cannot be adopted that are at variance with statutory provisions or that amend or nullify legislative intent.<sup>5</sup> An agency has only that authority which is either expressly or by necessary implication delegated to that agency.<sup>6</sup> This principle is codified in Iowa Code section 17A.23.<sup>7</sup> When rules adopted by an administrative agency exceed the agency's statutory authority, the rules are void and invalid.<sup>8</sup>

### 1. Authority to Adopt a Rule: Express Language or Necessary Implication

An express delegation of rulemaking authority is obvious — the agency's enabling statute specifically authorizes or mandates rulemaking.<sup>9</sup> If the statute merely authorizes rulemaking (e.g., “may adopt”) but does not mandate it, the agency remains free to create its policy either by rule or on a case-by-case basis.<sup>10</sup>

The authority to adopt a rule is not an obligation to adopt a rule. The following excerpt from Iowa Code section 89A.3 provides a good example:

1. The safety board may adopt rules governing maintenance, construction, alteration, and installation of conveyances, and the inspection and testing of

---

<sup>1</sup> For a skeletal outline of the rulemaking process, see appendix “B”.

<sup>2</sup> 5 U.S.C. §§551-559.

<sup>3</sup> Arthur E. Bonfield, *The Iowa Administrative Procedure Act: Background, Construction, Applicability, Public Access to Agency Law, The Rulemaking Process*, 60 Iowa L. Rev. 731 (1975).

<sup>4</sup> *Kerr v. Iowa Public Service Co.*, 274 N.W.2d 283, 287 (Iowa 1979).

<sup>5</sup> *Bruce Motor Freight, Inc. v. Lauterbach*, 247 Iowa 956, 971, 77 N.W.2d 613, 616 (Iowa 1956).

<sup>6</sup> *Wallace v. Iowa State Board of Education*, 770 N.W. 2d 344 (Iowa 2009).

<sup>7</sup> “An agency shall have only that authority or discretion delegated or conferred upon the agency by law and shall not expand or enlarge its authority or discretion beyond the powers delegated to or conferred upon the agency.” Iowa Code §17A.23. This statutory provision may provide more detail than does the common law, by more clearly identifying the source of agency authority.

<sup>8</sup> *Motor Club of Iowa v. Department of Transportation*, 251 N.W. 2d 510, 517-18 (Iowa 1977).

<sup>9</sup> *Auen v. Alcoholic Beverages Div.*, 679 N.W.2d 586, 590 (Iowa 2004) describing the agency's authority to adopt rules that was included in the legislation.

<sup>10</sup> See: *Renda v. Iowa Civil Rights Commission*, 784 N.W.2d 8, pp. 10-15 (Iowa 2010); *Neal v. Annett Holdings, Inc.*, 814 N.W.2d 512, 519 (Iowa 2012).



## RULEMAKING GUIDE

---

new and existing installations as necessary to provide for the public safety, and to protect the public welfare.

2. The safety board shall adopt, amend, or repeal rules pursuant to chapter 17A as it deems necessary for the administration of this chapter, which shall include but not be limited to rules providing for:
  - a. Classifications of types of conveyances.
  - b. Maintenance, inspection, testing, and operation of the various classes of conveyances.

The nature of the legislative delegation is critical to determine the scope of review on judicial review of an agency's interpretation of a statute.<sup>11</sup>

### 2. Substantial Compliance

Strict compliance with the rulemaking procedures set out in Iowa Code sections 17A.4 through 17A.8 is not required to establish a valid rule — the IAPA requires only “substantial compliance.”<sup>12</sup>

### 3. Narrow Construction of Rulemaking Authority

2013 Iowa Acts, chapter 114 (HF 586), section 5, amended Iowa Code section 17A.23 by revising the third paragraph to read as follows:

3. An agency shall have only that authority or discretion delegated to or conferred upon the agency by law and shall not expand or enlarge its authority or discretion beyond the powers delegated to or conferred upon the agency.

Prior to the enactment of HF 586, that paragraph was simply a restatement of common law. An administrative agency does not have *any* independent law-making power.<sup>13</sup>

## III. Definition of Agency — Iowa Code Section 17A.2

Iowa Code section 17A.2(1) defines an “agency” as “each board, commission, department, officer, or other administrative office or unit of the state.”

### A. Administrative Office or Unit

The definition essentially encompasses any government entity that has the authority to affect the rights, duties, or responsibilities of persons through rulemaking, adjudication, or informally in action. This definition excludes purely advisory groups.

### B. Agency Exclusions and Requirements

The ARRC insists that any action taken by a board or commission be based on a majority vote of the entire board or commission.<sup>14</sup> However, standard voting procedure for legislative bodies, taken from both Mason's Manual of Legislative Procedure and Robert's Rules of Order; calls for a simple majority of those present and voting.<sup>15</sup>

---

<sup>11</sup> Arthur E. Bonfield, Amendments to Iowa Administrative Procedure Act, Report on Selected Provisions to the Iowa State Bar Association and Iowa State Government, p. 68 (1998).

<sup>12</sup> Iowa Code §17A.4(5).

<sup>13</sup> Northwestern Bell Telephone v. Iowa Utilities Board, 477 N.W.2d 678, 682 (Iowa 1991).

<sup>14</sup> Administrative Rules Review Committee Rules of Procedure: 1.4(2). (Iowa ARRC 2013).

<sup>15</sup> Mason's Manual of Legislative Procedure, §§43-8, 50, 510 (National Conference of State Legislatures, 2010 ed.); Robert's Rules Online: RulesOnline.com, §50, <http://www.rulesonline.com/ror-09.htm>.



## Appendix A — State Agencies in the Iowa Administrative Code

“Umbrella” agencies are set out below at the left-hand margin in **BOLD** letters. Divisions within umbrella agencies (boards, commissions, etc.) are indented and set out in lowercase type. Other autonomous and elected head agencies are included alphabetically in CAPITALS at the left-hand margin.

- 14 Umbrella Departments\*
- 54 Rulemaking subunits
- 05 Elected head agencies
- 37 Independent agencies

\*Agriculture is listed twice, both as an umbrella and as an elected head agency

ADMINISTRATIVE SERVICES  
DEPARTMENT[11]  
AGING, DEPARTMENT ON[17]  
**AGRICULTURE AND LAND STEWARDSHIP  
DEPARTMENT[21]**  
Soil Conservation Division[27]  
ATTORNEY GENERAL[61]  
AUDITOR OF STATE[81]  
BEEF INDUSTRY COUNCIL, IOWA[101]  
BLIND, DEPARTMENT FOR THE[111]  
CAPITAL INVESTMENT BOARD, IOWA[123]  
CITIZENS’ AIDE[141]  
CIVIL RIGHTS COMMISSION[161]  
**COMMERCE DEPARTMENT[181]**  
Alcoholic Beverages Division[185]  
Banking Division[187]  
Credit Union Division[189]  
Insurance Division[191]  
Professional Licensing and Regulation  
Bureau[193]  
[TODO: replace sample text below]  
ADMINISTRATIVE SERVICES  
DEPARTMENT[11]  
AGING, DEPARTMENT ON[17]  
**AGRICULTURE AND LAND STEWARDSHIP  
DEPARTMENT[21]**  
Soil Conservation Division[27]  
ATTORNEY GENERAL[61]  
AUDITOR OF STATE[81]  
BEEF INDUSTRY COUNCIL, IOWA[101]  
BLIND, DEPARTMENT FOR THE[111]  
CAPITAL INVESTMENT BOARD, IOWA[123]  
CITIZENS’ AIDE[141]

CIVIL RIGHTS COMMISSION[161]  
**COMMERCE DEPARTMENT[181]**  
Alcoholic Beverages Division[185]  
Banking Division[187]  
Credit Union Division[189]  
Insurance Division[191]  
Professional Licensing and Regulation  
Bureau[193]  
ADMINISTRATIVE SERVICES  
DEPARTMENT[11]  
AGING, DEPARTMENT ON[17]  
**AGRICULTURE AND LAND STEWARDSHIP  
DEPARTMENT[21]**  
Soil Conservation Division[27]  
ATTORNEY GENERAL[61]  
BEEF INDUSTRY COUNCIL, IOWA[101]  
CIVIL RIGHTS COMMISSION[161]  
**COMMERCE DEPARTMENT[181]**  
Alcoholic Beverages Division[185]  
Professional Licensing and Regulation  
Bureau[193]  
ADMINISTRATIVE SERVICES  
DEPARTMENT[11]  
AGING, DEPARTMENT ON[17]  
**AGRICULTURE AND LAND STEWARDSHIP  
DEPARTMENT[21]**  
Soil Conservation Division[27]  
ATTORNEY GENERAL[61]  
CIVIL RIGHTS COMMISSION[161]  
**COMMERCE DEPARTMENT[181]**  
Alcoholic Beverages Division[185]  
Professional Licensing and Regulation  
Bureau[193]



## RULEMAKING GUIDE

### Appendix B — The Iowa Rulemaking Process Diagram

